

(7) Provide that the contractor maintains an appropriate record system for services to enrolled recipients;

(8) Provide that the contractor safeguards information about recipients as required by part 431, subpart F of this chapter;

(9) Specify any activities to be performed by the contractor that are related to third party liability requirements in part 433, subpart D of this chapter;

(10) Specify which functions may be subcontracted; and

(11) Provide that any subcontracts meet the requirements of paragraph (b) of this section.

(b) *Subcontracts.* All subcontracts must be in writing and fulfill the requirements of this part that are appropriate to the service or activity delegated under the subcontract.

(c) *Continued responsibility of contractor.* No subcontract terminates the legal responsibility of the contractor to the agency to assure that all activities under the contract are carried out.

[48 FR 54020, Nov. 30, 1983, as amended at 67 FR 41095, June 14, 2002]

Subpart B—Contracts with Fiscal Agents and Private Nonmedical Institutions

§ 434.10 Contracts with fiscal agents.

Contracts with fiscal agents must—

(a) Meet the requirements of § 434.6;

(b) Include termination procedures that require the contractors to supply promptly all material necessary for continued operation of payment and related systems. This material includes—

- (1) Computer programs;
- (2) Data files;
- (3) User and operation manuals, and other documentation;
- (4) System and program documentation; and

(5) Training programs for Medicaid agency staff, their agents or designated representatives in the operation and maintenance of the system;

(c) Offer to the State one or both of the following options, if the fiscal agent or the fiscal agent's subcontractor has a proprietary right to material specified in paragraph (b) of this section:

(1) Purchasing the material; or

(2) Purchasing the use of the material through leasing or other means; and

(d) State that payment to providers will be made in accordance with part 447 of this chapter.

§ 434.12 Contracts with private non-medical institutions.

Contracts with private nonmedical institutions must—

(a) Meet the requirements of § 434.6;

(b) Specify a capitation fee based on the cost of the services provided, in accordance with the reimbursement requirements prescribed in part 447 of this chapter; and

(c) Specify when the capitation fee must be paid.

§ 434.14 [Reserved]

Subpart C [Reserved]

Subpart D—Contracts With Health Insuring Organizations

§ 434.40 Contract requirements.

(a) Contracts with health insuring organizations that are not subject to the requirements in section 1903(m)(2)(A) must:

(1) Meet the general requirements for all contracts and subcontracts specified in § 434.6;

(2) Specify that the contractor assumes at least part of the underwriting risk and;

(i) If the contractor assumes the full underwriting risk, specify that payment of the capitation fees to the contractor during the contract period constitutes full payment by the agency for the cost of medical services provided under the contract;

(ii) If the contractor assumes less than the full underwriting risk, specify how the risk is apportioned between the agency and the contractor;

(3) Specify whether the contractor returns to the agency part of any savings remaining after the allowable costs are deducted from the capitations fees, and if savings are returned, the apportionment between agency and the contractor; and

§ 434.70

(4) Specify the extent, if any, to which the contractor may obtain reinsurance of a portion of the underwriting risk.

(b) The contract must—

(1) Specify that the capitation fee will not exceed the limits set forth under part 447 of this chapter.

(2) Specify that, except as permitted under paragraph (b) of this section, the capitation fee paid on behalf of each recipient may not be renegotiated—

(i) During the contract period if the contract period is 1 year or less; or

(ii) More often than annually if the contract period is for more than 1 year.

(3) Specify that the capitation fee will not include any amount for recoupment of any specific losses suffered by the contractor for risks assumed under the same contract or a prior contract with the agency; and

(4) Specify the actuarial basis for computation of the capitation fee.

(c) The capitation fee may be renegotiated more frequently than annually for recipients who are not enrolled at the time of renegotiation or if the renegotiation is required by changes in Federal or State law.

[55 FR 51295, Dec. 13, 1990]

Subpart E [Reserved]

Subpart F—Federal Financial Participation

SOURCE: 48 FR 54020, Nov. 20, 1983, unless otherwise noted. Redesignated at 55 FR 51295, Dec. 13, 1990.

§ 434.70 Conditions for Federal Financial Participation (FFP).

(a) *Basic requirements.* FFP is available only for periods during which the contract—

(1) Meets the requirements of this part;

(2) Meets the applicable requirements of 45 CFR part 74; and

(3) Is in effect.

(b) *Basis for withholding.* CMS may withhold FFP for any period during which the State fails to meet the State plan requirements of this part.

[67 FR 41095, June 14, 2002]

42 CFR Ch. IV (10–1–06 Edition)

§ 434.76 Costs under fiscal agent contracts.

Under each contract with a fiscal agent—

(a) The amount paid to the provider of medical services is a medical assistance cost; and

(b) The amount paid to the contractor for performing the agreed-upon functions is an administrative cost.

§ 434.78 Right to reconsideration of disallowance.

A Medicaid agency dissatisfied with a disallowance of FFP under this subpart may request and will be granted reconsideration in accordance with 45 CFR part 16.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

Subpart A—General Provisions and Definitions

Sec.

435.2 Purpose and applicability.

435.3 Basis.

435.4 Definitions and use of terms.

435.10 State plan requirements.

Subpart B—Mandatory Coverage of the Categorically Needy

435.100 Scope.

MANDATORY COVERAGE OF FAMILIES AND CHILDREN

435.110 Individuals receiving aid to families with dependent children.

435.112 Families terminated from AFDC because of increased earnings or hours of employment.

435.113 Individuals who are ineligible for AFDC because of requirements that do not apply under title XIX of the Act.

435.114 Individuals who would be eligible for AFDC except for increased OASDI income under Pub. L. 92-336 (July 1, 1972).

435.115 Individuals deemed to be receiving AFDC.

MANDATORY COVERAGE OF PREGNANT WOMEN, CHILDREN UNDER 8, AND NEWBORN CHILDREN

435.116 Qualified pregnant women and children who are not qualified family members.

435.117 Newborn children.